REMARKS / ARGUMENTS

The present application includes pending claims 1-42, all of which have been rejected. The Applicant respectfully submits that the claims define patentable subject matter.

Initially, the Applicant notes that a goal of patent examination is to provide a prompt and complete examination of a patent application.

> It is essential that patent applicants obtain a prompt yet complete examination of their applications. Under the principles of compact prosecution, each claim should be reviewed for compliance with every statutory requirement for patentability in the *initial review* of the application, even if one or more claims are found to be deficient with respect to some statutory requirement. Thus, Office personnel *should* state *all* reasons and bases for rejecting claims in the *first* Office action. Deficiencies should be explained clearly, particularly when they serve as a basis for a rejection. Whenever practicable, Office personnel should indicate how rejections may be overcome and how problems may be resolved. A failure to follow this approach can lead to unnecessary delays in the prosecution of the application.

See Manual of Patent Examining Procedure (MPEP) § 2106(II). As such, the Applicant assumes, based on the goals of patent examination noted above, that the present Office Action has set forth "all reasons and bases" for rejecting the claims.

Claims 1-42 stand rejected under 35 U.S.C. § 102(e) as being anticipated by USP 6,643,292 ("Chapman"). The Applicant respectfully traverses these rejections at least for the reasons previously set forth during prosecution and at least based on the following remarks.

REJECTION UNDER 35 U.S.C. § 102

I.   Chapman Does Not Anticipate Claims 1-42

The Applicant first turns to the rejection of claims 1-42 under 35 U.S.C. § 102(e) as being anticipated by Chapman. With regard to the anticipation rejections under § 102, MPEP 2131 states that "[a] claim is anticipated only if **each and every element** as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." See Manual of Patent Examining Procedure (MPEP) at 2131 (internal citation omitted). Furthermore, "[t]he identical invention must be shown in as complete detail as is contained in the … claim." See id. (internal citation omitted).

Without conceding that Chapman qualifies as prior art under 35 U.S.C. § 102(e), the Applicant respectfully traverses this rejection as follows.

A.   Rejection of Independent Claim 1 under 35 U.S.C. § 102(e)

With regard to the rejection of independent claim 1 under 35 U.S.C. § 102(e), the Applicant submits that Chapman does not disclose or suggest at least the limitation of "aggregating messages from a physical layer of each communication band and each communication channel associated with each of a plurality of protocols in a single multi-protocol layer of the multi-band, multi-protocol network," as recited by the Applicant in independent claim 1.

The Office Action states the following:

For claims 1, 11, 21, 31, and 41, Chapman teaches a method, a machine-readable storage (see processor and protocols in Fig. 8. It means that machine-readable storage is used), a system (see Fig. 8) for providing enhanced connectivity (packet data transport mechanism, see title) in a multi-band (see three customer equipments to Input module in Fig. 8, and customer digital data - voice and data, see col. 3, line 26, and col. 1, line 33. Those mean multi-band), multi-protocol network (TCP/IP, see Fig. 8, and DHCP, see col. 5, line 17, and RSVP, see col. 6, line 50. All are used for this system), comprising:

aggregating messages of each communication channel from a physical layer (see Encapsulation Module 84 in Fig. 8; In Internet terminology, aggregating traffic streams by encapsulating them into a single IP stream is often called tunneling, see col. 2, lines 55-57) of each communication band and each communication channel (see three customer equipments to Input module in Fig. 8, and customer digital data, see col. 3, line 26. Each customer occupies a channel and each channel has voice and data that is multi-band) associated with each of a plurality of protocols (TCP/IP, see Fig. 8, and DHCP, see col. 5, line 17, and RSVP, see col. 6, line 59) in a single multi-protocol layer of the multi-protocol network (see 84 in Fig. 8, and It is commonly understood in the field of the present invention that a layer under the networking laver is called "transport" layer ... This is in contrast to the layered model of the OSI, see col. 2, lines 33-35 and lines 33-42);

identifying an optimal communication path from among said communication channel based on said single multi-protocol layer (in the packet transport network to allow the set-up of paths with a particular performance over and above best effort, see col. 6, lines 52-53); and

establishing a communication session using said identified optimal communication path (see Tx module 92 in Fig. 8).

See Office Action at pages 2-3. Referring to Fig. 8 of Chapman, the Examiner

refers to "three customer equipments to input module in Fig. 8" and concludes that

"each channel has voice and data that is multi-band." The Applicant respectfully

disagrees. Chapman discloses that the input module 80 simply receives customer

digital data flows (the three arrows going into the input module 80). Even if such data flow includes voice and data, this does not mean that the input data flows are from multiple communication bands. In fact, there is no such support in Chapman that the input flows are "multi-band" communications. Therefore, Chapman does not disclose or suggest at least the limitation of "aggregating messages from a physical layer of each communication band and each communication channel associated with each of a plurality of protocols in a single multi-protocol layer of the multi-band, multi-protocol network," as recited by the Applicant in independent claim 1.

Furthermore with regard to the rejection of independent claim 1 under 35 U.S.C. § 102(e), the Applicant submits that Chapman does not disclose or suggest at least the limitation of "identifying an optimal communication path from among said communication band and said communication channel based on said aggregated messages in said single multi-protocol layer," as recited by the Applicant in independent claim 1. Initially, the Applicant points out that the Examiner (in the above Office Action citation) has incorrectly cited the above sub-clause from claim 1. More specifically, the Examiner has omitted the above underlined language in her argument, which relies on col. 6, lines 52-53 of Chapman. Chapman, at col. 6, lines 52-53, states:

> … in the packet transport network to allow the set-up of paths with a particular performance over and above best effort.

The Applicant fails to see the relevancy of this citation. In her previous argument (regarding "aggregating messages"), the Examiner has equated Applicant's "aggregated

messages" to Chapman's encapsulated digital data flows received by input module 80. Even if we assume Chapman's encapsulated digital data flows are "aggregated messages" from a physical layer of each communication band and each communication channel associated with each of a plurality of protocols in a single multi-protocol layer of a multi-band, multi-protocol network (which they are not), the Examiner's argument is still deficient. More specifically, Chapman does not disclose any identifying an optimal communication path (from the inputs to the module 80), based on such encapsulated digital data flows. In fact, Chapman's encapsulation module 84 uses all inputs to module 80 and encapsulates all received digital data flows. Therefore, Chapman does not disclose or suggest at least the limitation of "identifying an optimal communication path from among said communication band and said communication channel based on said aggregated messages in said single multi-protocol layer," as recited by the Applicant in independent claim 1.

Furthermore with regard to the rejection of independent claim 1 under 35 U.S.C. § 102(e), the Applicant submits that Chapman does not disclose or suggest at least the limitation of "establishing a communication session using said identified optimal communication path," as recited by the Applicant in independent claim 1. The Examiner relies for support on Chapman's TX module 92 in Fig. 8. Chapman, however, discloses that the TX module 92 emits completed transport IP packets into the packet transport network, and by reading the destination address properly routes the packets to the appropriate destination transport access point. In other words, all digital data flows

received by module 80, are encapsulated by respective destination headers and then routed by the TX module 92 to the appropriate destination transport access point. In other words, there is no establishing of a communication session using an identified optimal communication path (e.g., a communication path selected from the input paths to module 80). In fact, there is also no identification of optimal communication path, as previously explained. Therefore, Chapman does not disclose or suggest at least the limitation of "establishing a communication session using said identified optimal communication path," as recited by the Applicant in independent claim 1.

Accordingly, independent claim 1 is not anticipated by Chapman and is allowable. Independent claims 11, 21, 31 and 41 are similar in many respects to the method disclosed in independent claim 1. Therefore, the Applicant submits that independent claims 11, 21, 31 and 41 are also allowable over the references cited in the Office Action at least for the reasons stated above with regard to claim 1.

B.   Rejection of Dependent Claims 2, 12, 22, 32 and 42

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 11, 21, 31 and 41 under 35 U.S.C. § 102(e) as being anticipated by Chapman has been overcome and requests that the rejection be withdrawn. Additionally, claims 2-10, 12-20, 22-30, 32-40, and 42 depend from independent claims 1, 11, 21, 31 and 41, respectively, and are, consequently, also respectfully submitted to be allowable.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 2-10, 12-20, 22-30, 32-40, and 42.

In general, the Office Action makes various statements regarding claims 1-42 and the cited references, which statements are now moot in light of the above. Thus, the Applicant will not address such statements at the present time. However, the Applicant expressly reserves the right to challenge such statements in the future should the need arise (e.g., if such statement should become relevant by appearing in a rejection of any current or future claim).

CONCLUSION

Based on at least the foregoing, the Applicant believes that all claims 1-42 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and requests that the Examiner telephone the undersigned Attorney at (312) 775-8176.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

Date: 19-OCT-2009   /Ognyan I. Beremski/

                                                     Ognyan Beremski, Esq.
                                                     Registration No. 51,458
                                                     Attorney for Applicant

McANDREWS, HELD & MALLOY, LTD.
500 WEST MADISON STREET, 34TH FLOOR
CHICAGO, ILLINOIS 60661
(312) 775-8000

/ OIB